

No. 18-203

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IN THE  
**Supreme Court of the United States**

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JOEY M. CHANDLER,

*Petitioner,*

v.

STATE OF MISSISSIPPI,

*Respondent.*

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On Petition for a Writ of Certiorari to the  
Supreme Court of Mississippi

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**REPLY BRIEF FOR PETITIONER**

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JACOB HOWARD

RODERICK & SOLANGE

MACARTHUR JUSTICE CENTER  
UNIVERSITY OF MISSISSIPPI  
SCHOOL OF LAW  
767 North Congress Street  
Jackson, MS 39202

AMIR H. ALI

RODERICK & SOLANGE

MACARTHUR JUSTICE CENTER  
777 6th Street NW  
Washington, DC 20001

DAVID M. SHAPIRO

*Counsel of Record*

RODERICK & SOLANGE  
MACARTHUR JUSTICE CENTER  
NORTHWESTERN PRITZKER  
SCHOOL OF LAW  
375 E. Chicago Ave.  
Chicago, IL 60611

(312) 503-0711

david.shapiro@

law.northwestern.edu

*Attorneys for Petitioner*

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**REPLY BRIEF FOR PETITIONER**

1. On the first question presented—whether the Eighth Amendment requires a finding of permanent incorrigibility—Mississippi disputes neither the deep, intractable, and acknowledged split of authority nor the profound national importance of the matter. Respondent relies instead on its assertion that the state supreme court did not decide the question. That argument is dead wrong. The Court should grant *certiorari*.

a. Petitioner plainly argued, and the Supreme Court of Mississippi squarely decided, the first question presented: “Whether the Eighth Amendment requires the sentencing authority to make a finding that a juvenile is permanently incorrigible before imposing a sentence of life without parole.” Pet. i. This case provides the perfect vehicle to resolve the issue.

Petitioner’s opening brief in the state supreme court challenged the lack of a finding as a “glaring” error:

[W]hat is *glaring absent* from the court’s opinion is any discussion on the final *Miller* factor, “the possibility of rehabilitation.” *The court did not make any finding, or any mention, that Chandler was “irreparably corrupt”* and that a life without the possibility of parole sentence was justified.

Petitioner’s Miss. Sup. Ct. Br. 9 (emphasis added).<sup>1</sup>

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<sup>1</sup> The Supreme Court of Mississippi orders and briefs in this case are available on the court’s website through a general docket search under case number 2015-KA-1636-SCT.

On the first page of his reply brief, Petitioner stated: “The trial court did not make a proper finding that Chandler was an *irreparably corrupt* juvenile, and therefore eligible for a life-without-parole sentence.” Petitioner’s Miss. Sup. Ct. Reply Br. 1 (emphasis in original). The brief continued:

In this case, the trial court made no finding that Chandler was among the rare class of juveniles “whose crime reflect irreparable corruption.” *The failure to answer this question is reversible.*

....

The trial court failed to make a finding that Chandler was “irreparably corrupt” or “permanently incorrigible”, a necessary requirement for him to be placed in the narrow class of juvenile murderers for whom a life without parole sentence would be proportional under the Eighth Amendment.

*Id.* at 2, 4 (quoting *Miller v. Alabama*, 567 U.S. 460, 479-480 (2012) and *Veal v. State*, 784 S.E.2d 403, 412 (Ga. 2016)).

Moreover, the state supreme court subsequently ordered supplemental briefing on the question: “Does the trial court’s sentencing order in the instant case comport with *Miller*’s requirements as described in *Montgomery*?” Miss. Sup. Ct. Mar. 1, 2017 Order at 2. In explaining that it did not, Petitioner repeatedly emphasized that “[t]he trial court failed to make a finding that Chandler was ‘irreparably corrupt’ or ‘permanently incorrigible,’ a necessary requirement for Chandler to be placed in the narrow class of juvenile murder[er]s [for] whom a life without parole sentence would be proportional under the Eighth

Amendment.” Petitioner’s Miss. Sup. Ct. Supp. Br. at 11 (citing *Montgomery v. Louisiana*, 136 S. Ct. 718, 733-36 (2016)).<sup>2</sup> The State, in its supplemental brief, maintained that no such finding was necessary because “[i]n *Montgomery* the Court specifically stated ‘*Miller* did not require trial courts to make a finding of fact regarding a child’s incorrigibility.’” Respondent’s Miss. Sup. Ct. Supp. Br. 9 (quoting *Montgomery*, 136 S. Ct. at 735).<sup>3</sup>

The five-justice majority obviously passed on the matter. The court acknowledged that “Chandler places the trial court in error for failing to make any findings concerning Chandler’s capacity for rehabilitation” and expressly rejected that claim by adopting the State’s position that “[t]he *Montgomery* Court confirmed that *Miller* does not require trial courts to make a finding of fact regarding a child’s incorrigibility.” Pet. App. 10a (citing *Montgomery*, 136 S. Ct. at 735).

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<sup>2</sup> See also Petitioner’s Miss. Sup. Ct. Supp. Br. 10 (“The trial court made no finding that Chandler was *irreparably corrupt* and therefore in the small class of juveniles that could receive a life without parole sentence.”); *id.* (“The trial court was required to find whether or not Chandler was *irreparably corrupt* before sentencing him to life without parole.”); *id.* at 9 (“The trial court ultimately failed to make a finding that Chandler was irreparably corrupt before sentencing him to life without parole.”).

<sup>3</sup> In his reply to the State’s supplemental brief, Petitioner also provided a lengthy rebuttal to the State’s “conten[tion] that *Miller* and *Montgomery* do not require a sentencing authority to make a factual finding of irreparable corruption before imposing a life-without-parole sentence.” Petitioner’s Miss. Sup. Ct. Supp. Reply Br. 4. See also *id.* at 4-8.

The four dissenters differed with the majority's holding, but they too agreed that the case presented the question:

In light of the Supreme Court's recent clarification of *Miller* in *Montgomery*, the trial court, at a minimum, should have addressed Chandler's capacity for rehabilitation and made an on-the-record finding that Chandler was one of the rare juvenile offenders whose crime reflected permanent incorrigibility before imposing what in effect is a life-without-parole sentence. Because I believe that the trial court's resentencing of Chandler was insufficient as a matter of law, I respectfully dissent.

Pet. App. 16a-17a.

The unmistakable holding in this case is not lost on Mississippi courts. In *Wharton v. State*, No. 2017-CA-441, 2018 WL 4708220, at \*3 (Miss. Ct. App. Oct. 2, 2018) for example, the Mississippi Court of Appeals rejected a juvenile homicide offender's claim "that the sentencing authority in a *Miller* hearing must make a determination of 'permanent incorrigibility' or 'irretrievable depravity' in order to impose a life-without-parole-sentence against him." The court explained: "In *Chandler*, the Mississippi Supreme Court *expressly held* that '[t]he *Montgomery* Court confirmed that *Miller* does *not* require trial courts to make a finding of fact regarding a child's incorrigibility.'" *Id.* (quoting *Chandler v. State*, 242 So.3d 65, 69 (Miss. 2018) (first emphasis added)).

Similarly, in *Jones v. State*, the Supreme Court of Mississippi granted a petition for *certiorari* asserting that "[the defendant's] sentence must be vacated because the [sentencing] court made no finding of



permanent incorrigibility.” *Jones v. State*, No. 2015-CT-899-SCT, slip op. at 15 (Miss. Nov. 29, 2018) (Kitchens, P.J., objecting). The court later dismissed the petition by a 5-4 vote. *Id.* at 1. The majority did not provide a rationale for the dismissal, but the four objecting justices acknowledged that in this case “a five-member majority of this Court rejected Chandler’s arguments” for a fact-finding requirement, holding “that *Montgomery* did not require a sentencer to make a fact finding that a juvenile was permanently incorrigible before imposing life without parole.” *Id.* at 19 (citing *Chandler*, 242 So.3d at 69 (Miss. 2018)). *See also id.* at 20 (“As *Chandler* recognized, *Montgomery* did not interpret *Miller* to require a finding of fact on a particular juvenile’s permanent incorrigibility.”).<sup>4</sup>

In short, Mississippi’s preservation concerns are wholly unfounded, and this case presents an ideal vehicle to decide whether the sentencing court must make a finding of permanent incorrigibility.

b. Mississippi does not dispute that a deep, acknowledged, and intractable split divides state courts of last resort on the first question presented, nor that the Ninth Circuit took a position on that split by rejecting a required finding of permanent incorrigibility in *United States v. Briones*, 890 F.3d 811 (9th Cir. 2018). At minimum, then, all parties recognize a clear split, with six states (Georgia, Oklahoma, Illinois, Wyoming, Iowa, Florida, and Pennsylvania) on one side, and the Ninth Circuit and

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<sup>4</sup> The order and objection in *Jones* are available at [https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700\\_413029.pdf&c=82573&a=N&s=2](https://courts.ms.gov/appellatecourts/docket/sendPDF.php?f=700_413029.pdf&c=82573&a=N&s=2).

five states (Mississippi, Arizona, Washington, Idaho, and Michigan) on the other.

That alone counsels a grant. This Court’s review is warranted when state courts of last resort conflict either with each other or with a federal circuit on matters of federal law. *See, e.g., McCoy v. Louisiana*, 138 S. Ct. 1500, 1507 (2018) (“We granted certiorari in view of a division of opinion among state courts of last resort . . . .”); *Jones v. Flowers*, 547 U.S. 220, 225 (2006); *Illinois v. Lidster*, 540 U.S. 419, 423 (2004); *Dir. of Revenue of Mo. v. CoBank ACB*, 531 U.S. 316, 320-21 (2001); *Johnson v. Fankell*, 520 U.S. 911, 914 (1997); *Nat’l Private Truck Council, Inc. v. Okla. Tax Comm’n*, 515 U.S. 582, 585-86 (1995); *PUD No. 1 of Jefferson Cty. v. Wash. Dep’t of Ecology*, 511 U.S. 700, 710 (1994); *see also* Jeffrey S. Sutton & Brittany Jones, *The Certiorari Process and State Court Decisions*, 131 HARV. L. REV. F. 167, 176-78 (2018) (advocating increased Supreme Court review of state court decisions, particularly in criminal cases). Mississippi does not dispute that this case meets both criteria—a well-developed split both among state courts and between state courts and a federal circuit.

c. Mississippi denies a split between the Fourth and Ninth Circuits by claiming that *Malvo v. Mathena*, 893 F.3d 265 (4th Cir. 2018), does not require a finding of permanent incorrigibility. *Malvo* says otherwise in plain English: “[A] sentencing judge . . . violates *Miller’s* rule any time it imposes a discretionary life-without-parole sentence on a juvenile homicide offender without first concluding that the offender’s ‘crimes reflect permanent incorrigibility.’” 893 F.3d at 274. *See also id.* at 275 (holding that “Malvo’s sentencing proceedings in the Chesapeake City Circuit Court did not satisfy the

requirements of the Eighth Amendment as articulated in *Miller* and *Montgomery*” because “the Chesapeake City jury was never charged with finding whether Malvo’s crimes reflected irreparable corruption or permanent incorrigibility, a determination that is now a prerequisite to imposing a life-without-parole sentence on a juvenile homicide offender”). This Court’s review is therefore also necessary to resolve a circuit split between the Fourth and Ninth Circuits.<sup>5</sup>

d. Mississippi does not challenge the profound importance of the question, nor could it. The State’s own courts openly flout this Court’s substantive rule. Indeed, the Mississippi Court of Appeals has disparaged this Court’s permanent incorrigibility standard as “more like a theological concept than a rule of law to be applied by an earthly judge.” *Cook v. State*, 242 So.3d 865, 873 (Miss. Ct. App. 2017).

In Mississippi—and across the nation—this Court’s mandate to restrict life without parole to “the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility,” *Montgomery*, 136 S. Ct. at 734, is just a suggestion if courts can impose the sentence without first determining that a juvenile defendant is, in fact, permanently incorrigible. Thus, a requirement that sentencing authorities make a finding of permanent incorrigibility before imposing a life without parole sentence on a juvenile is necessary “[t]o preserve the rule of law.” See Amicus Br. of Scholars of Criminal Law at 16. See also Michael R. Mukasey & Mary B. McCord, *What Punishment Is*

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<sup>5</sup> *Malvo* is the subject of a pending petition for *certiorari*. See *Mathena v. Malvo*, No. 18-217. If the Court grants that petition, it may wish to hold this petition while it considers the other case.

*Cruel and Unusual for a Crime Committed at 17?*, WALL ST. J., Sept. 21, 2018 (arguing the Court should grant review in this case to reaffirm the “requirement that [its] own rulings be adhered to”).<sup>6</sup> A finding requirement is also necessary to “ensure the fair application of proportionate sentencing principles—and therefore the evenhanded administration of justice—nationwide.” Amicus Br. of Current and Former Prosecutors, Department of Justice Officials, and Judges at 8. *See also* George F. Will, *People Have A Remarkable Ability To Rehabilitate. Courts Should Recognize That.*, WASH. POST, Nov. 9, 2018 (“[T]he Supreme Court should hear Chandler’s case to provide standards requiring sentencing courts to be serious when making an extraordinarily serious judgment about someone’s ‘irretrievable depravity.’”).

2. The second question presented is: “Whether Joey Chandler’s life without parole sentence violates the Eighth Amendment because the sentencing judge failed to consider substantial, unrebutted evidence of his rehabilitation.” Pet. i. Mississippi does not dispute that the rehabilitation evidence is substantial and unrebutted. Instead, Mississippi claims that the trial court considered it after all.

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<sup>6</sup> Mississippi cites six prior denials of *certiorari*, but four of them did not raise the first question presented at all. *See* Petition for Writ of Certiorari, *Johnson v. Idaho*, 138 S. Ct. 470 (2017) (No. 17-236), 2017 WL 3575738, at \*i; Petition for Writ of Certiorari, *Veal v. Georgia*, 139 S. Ct. 320 (2018) (No. 17-1510), 2018 WL 2113638, at \*i; Petition for Writ of Certiorari at i, *Holman v. Illinois*, 138 S. Ct. 937 (2018) (No. 17-7176); Petition for Writ of Certiorari at i, *Ramos v. Idaho*, 138 S. Ct. 467 (2017) (No. 16-9363).

That argument is absurd. The *sum total* of the trial court's rehabilitation "analysis" comprises two sentences, neither of which mention the evidence: "The United States Supreme Court also talks about rehabilitation and the defendant's prospects for future rehabilitation. This Court notes that the Executive Branch has the ability to pardon and commute sentences in this State should it deem such action warranted." Pet. App. 26a-27a.

To ignore the overwhelming evidence of rehabilitation, as the trial court did, guts *Montgomery*, where this Court stated:

Petitioner has discussed in his submissions to this Court his evolution from a troubled, misguided youth to a model member of the prison community. Petitioner states that he helped establish an inmate boxing team, of which he later became a trainer and coach. He alleges that he has contributed his time and labor to the prison's silkscreen department and that he strives to offer advice and serve as a role model to other inmates. These claims have not been tested or even addressed by the State, so the Court does not confirm their accuracy. The petitioner's submissions are relevant, however, as an example of one kind of evidence that prisoners might use to demonstrate rehabilitation.

136 S. Ct. at 736.

Petitioner presented that very sort of evidence, which the four dissenters from the decision below described as "substantial evidence of Chandler's rehabilitation in prison following his conviction." Pet App. 14a. The trial court did not even mention it.

The Court should grant review because its holdings are not comforting illusions but rules of law. “[S]entencing a child to life without parole is excessive for all but ‘the rare juvenile offender whose crime reflects irreparable corruption.’” *Montgomery*, 136 S. Ct. at 724 (quoting *Miller*, 567 U.S. at 480-81). If what Joey Chandler got is good enough—if juvenile life sentences are to be dispensed without finding irreparable corruption or even considering evidence of rehabilitation—that rule is just words.

### CONCLUSION

The Court should grant the petition.

Respectfully submitted,

DAVID M. SHAPIRO

*Counsel of Record*

RODERICK & SOLANGE MACARTHUR JUSTICE CENTER

NORTHWESTERN PRITZKER SCHOOL OF LAW

375 E. Chicago Ave.

Chicago, IL 60611

(312) 503-0711

david.shapiro@law.northwestern.edu

JACOB HOWARD

RODERICK & SOLANGE MACARTHUR JUSTICE CENTER

UNIVERSITY OF MISSISSIPPI SCHOOL OF LAW

767 North Congress Street

Jackson, MS 39202

AMIR H. ALI

RODERICK & SOLANGE MACARTHUR JUSTICE CENTER

777 6th Street NW

Washington, DC 20001

*Attorneys for Petitioner*